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August 21, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

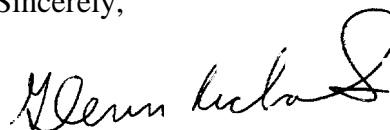
**RE: Comments of ONVOY, Inc.
CC Docket No. 01-92**

Dear Ms. Salas:

Pursuant to the *Notice of Proposed Rulemaking*, CC Docket No. 01-92, transmitted herewith on behalf of ONVOY, Inc. ("ONVOY") is an original and four (4) copies of Comments on Developing a Unified Intercarrier Compensation Regime. Also submitted is a disk containing a copy of both this transmittal letter and the Comments in Word 97 format.

Please date-stamp the "Receipt" copy of this filing and return it in the enclosed self-addressed, stamped envelope. Should you have any questions regarding this matter, please contact the undersigned at (202) 454-7016.

Sincerely,



Glenn S. Richards
Attorney for ONVOY, Inc.

Enclosures

cc: Wanda Harris
Common Carrier Bureau

Document #: 1154920v.1

U.S. of Commerce 014
LAW OFFICE

Before the
Federal Communications Commission
Washington, D.C. 20554

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AUG 21 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Developing a Unified Inter-carrier
Compensation Regime

CC Docket No. 01-92

COMMENTS OF ONVOY, INC.

Joy Gullikson
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ONVOY, INC.
August 21, 2001
CC Docket No. 01-92

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Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Developing a Unified Inter-carrier
Compensation Regime

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Onvoy, Inc. is an integrated broadband services provider and Interexchange Carrier ("IXC"), serving customers located in Minnesota with operations that span a large part of the country. Onvoy is pleased to respond to the Commission regarding intercarrier compensation. The Commission points out that it does not contemplate adopting new rules governing CLEC to CLEC, IXC to IXC, CMRS to CMRS, or CMRS to IXC arrangements. Rather, what needs to be examined is the arrangement between the incumbent local exchange carrier ("ILEC") and all other carriers.

SUMMARY

Onvoy offers the following general principles concerning Inter-carrier compensation:

1. There must, for the foreseeable future, be a different regulatory structure for ILECs than for CLECs, IXCs, or CMRS (**competitive carriers**) and companies offering any combination of the latter.

2. Interconnection between the ILEC and competitive providers must be administratively nonburdensome, free from arbitrage incentive, and enforceable by both the ILEC and the competitive provider.
3. Where traffic exchange is roughly equal, bill and keep arrangements should be available to either party upon request; and, the state PUC should be available to mandate bill and keep if one party does not wish to enter into a bill and keep arrangement. Where bill and keep is not appropriate, Onvoy recommends that a single per minute rate apply to the transfer of traffic between carriers.
4. SS7 arrangements are not associated with access charges and should not be billed on a usage basis.

I. THERE MUST, FOR THE FORESEEABLE FUTURE, BE A DIFFERENT REGULATORY STRUCTURE FOR ILECS THAN FOR OTHER CARRIERS, ISPS.

Most telecommunications competition takes place in the business markets; since businesses operate in various markets, it is important that they receive appropriate pricing signals in order to create efficiency. Onvoy has not seen any indication that affordability is an issue that has kept businesses from acquiring basic telecommunications service. However, the competition for residential customers is significantly less pronounced than for business customers. Today, due to long standing social engineering on the part of Congress, the FCC, and the state

commissions¹, the residential consumer pays rates for telephone service that may vary greatly from the cost of that service. The pricing signals that residential consumers receive can lead to poor choices, both on the part of the consumer and on the part of the provider.

The distorted pricing signals in the telecommunication arena should be considered in contrast with the pricing that occurs in the cable, wireless, and power industries, where there are no pockets of inelastic demand from which to milk subsidy revenues. When the residential consumer can be billed for the cost of the telecommunications service, even if the consumer benefits from an explicit subsidy, then there will be the likelihood of sustainable competition. Until then, it is imperative for society to ensure that high quality service reaches all who desire it at reasonable prices. The incumbent provider is charged with that duty. Continued vigilance over the incumbent is necessary to ensure that residential consumers are well provided for and not used to enhance the incumbent's prowess in the competitive arenas. This vigilance by regulatory authorities is not necessary for competitors, because, like the wireless industry, the ability to cross subsidize is considerably less than for the incumbent.

A second reason for treating incumbents in a different manner from competitors is that the incumbent holds considerable power in the wholesale local market. By owning access to the consumer, the incumbent controls the bulk of Inter-carrier

¹ Onvoy does not intend to suggest that this social engineering, which manipulated jurisdictional revenue requirements, business to residence ratios, and access charges, was wrong. Indeed, it did much to ensure the penetration levels that society enjoys today. Manipulation of costs was possible in a regulated monopoly environment.

Footnote continued on next page

compensation. Other than one or two mega competitors, most competitive providers are relatively new, coming into the industry within the last two decades. A significant difference that exists between a competitor and an incumbent is the size of the administrative resources available to the incumbent that is not available to capital-strapped competitors. The large size of administration allows the incumbent to set the rules for how services are to be monitored, billed, and paid for.

Many competitors spend months and more dollars than they can afford working out details on interconnection agreements. Onvoy has been attempting to sort out discrepancies between the rates Qwest billed Onvoy and the rates approved by the Minnesota PUC for more than a year. Qwest has had the ability to hold over significant dollars in credits resulting from the case, freezing Onvoy's ability to make appropriate capital investments.

Onvoy asserts that it should be the function of the FCC, or where appropriate, the PUC, to ensure that rates filed by the incumbent are cost justified, and appropriate to the wholesale market. Today, incumbents may file new rates for existing services, which are deemed approved by the FCC without a thorough examination of costs, unless a complaint is filed. It should not be permissible for the incumbent to file rates with dramatic implications on competitors, and rely on those affected to launch the deep pockets inquiry necessary to demonstrate whether prices are reasonable.

Footnote continued from previous page

Onvoy is suggesting that such manipulation will not achieve such laudable goals today, in a competitive IXC market and an aspiring competitive local market.

The need for monitoring the incumbent may seem on the surface to lend itself to a bill-and-keep arrangement for Inter-carrier compensation, but Onvoy asserts that the innate market power of the incumbent is too great to allow for the same treatment for incumbent and competitor.

For the foreseeable future, vigilance on the part of the FCC and the state commissions must continue, until it can be certain that the entity which controls the wholesale provision of service and acts as a direct competitor is behaving in a manner that will allow for sustained competition.² Onvoy would prefer to see structural separation of the wholesale and competitive side of the incumbent's business. Barring this action, Onvoy requests that the FCC continue monitoring the activities of the incumbent.

II. INTERCONNECTION BETWEEN ILECS AND COMPETITIVE PROVIDERS MUST BE ADMINISTRATIVELY NONBURDENSOME, FREE FROM ARBITRAGE INCENTIVE, AND ENFORCEABLE BY BOTH ILECs AND COMPETITORS.

When a competitor enters the market it must engineer its network, develop operating support systems, and market its products. It must also file for regulatory authority. In most instances, the competitor is dependent upon the distribution network of the incumbent to reach the ultimate customer. It has been Onvoy's unfortunate experience that the resources required for the administrative and regulatory entanglements associated with dealing with the incumbent have unduly slowed Onvoy's

² One example of oversight that is needed is in the incumbent's apparent ability to incorporate an embedded cost for the local loop into pricing of non regulated services such as Internet, where the competitor pays full cost for the loop.

penetration of the market and caused Onvoy's business plan to change. The changes in Onvoy's business plan have certainly been affected by the market and by other factors, but the undue influence exerted by the incumbent both directly and indirectly is counter to the goals of the Telecommunications Act.

One aspect of this burden is the complication of measuring, billing and paying access charges and reciprocal compensation, particularly on the terminating side, where verification of the incumbent's charges is next to impossible. Onvoy believes that one cost model, one method of collecting data, and one method of verification are needed to increase the efficiency of this market.

Onvoy sees no reason to charge different rates for minutes, depending on what type of minute is traveling the network. Onvoy recommends that it is reasonable to collect fees on a per minute basis for calls that change networks and are not on a dedicated circuit. The charge should be the same rate regardless of carrier, distance, switching, or "type" of minute. A standard per minute charge would allow competitors to place points of presence where suitable for that carrier, and would not penalize the incumbent for excessive transport. At the same time, the administrative ease in measurement and verification would free up a number of resources for the competitor.

As Onvoy envisions a standard per minute charge, intermediate carriers would still be free to collect a per minute charge for calls that were routed through it for the convenience of either the originating or terminating carrier. This simplified **Inter-carrier** compensation would allow competitors to focus resources on verification and appropriate billing. This is in contrast to today, where there are various types of

charges in various formats, and the competitive carrier must determine where to focus its resources, which in itself needlessly consumes resources.

- III. WHERE TRAFFIC EXCHANGE IS ROUGHLY EQUAL, BILL AND KEEP ARRANGEMENTS SHOULD BE AVAILABLE TO EITHER PARTY UPON REQUEST, AND THE STATE PUC HAVE THE AUTHORITY TO MANDATE BILL AND KEEP IF ONE PARTY DOES NOT WISH TO ENTER INTO A BILL AND KEEP ARRANGEMENT.

Onvoy's recommended form of Inter-carrier compensation would not preclude two carriers from entering a bill and keep arrangement if both carriers desire it. If traffic between the carriers were roughly equal, then a bill and keep arrangement is appropriate if either carrier desires such an arrangement. If one carrier did desire a bill and keep and the other did not, the state commission should have the authority to mandate a bill and keep arrangement.

The only difficulty Onvoy foresees in that the incumbent would use excessive pressure in other parts of the business arrangement to force bill and keep arrangements where it was beneficial to the incumbent and not to the competitive carrier. Onvoy would look to the FCC or the state commissions to establish rules to ensure that the incumbent did not exert inappropriate pressure on smaller competitors.

- IV. SS7 ARRANGEMENTS ARE NOT ASSOCIATED WITH ACCESS CHARGES AND SHOULD NOT BE BILLED ON A USAGE BASIS.

The commission identified two forms of Inter-carrier compensation in its NPRM: access charges and reciprocal compensation. Onvoy contends that the RBOCs have added another form of nonreciprocal compensation by introducing usage charges for SS7. Onvoy operates an SS7 network, providing its own SCPs and STPs, and links to a majority of telephone companies in the State of Minnesota. Until the RBOCs spied a

new revenue source in SS7 usage, Qwest and Onvoy terminated **SS7** signaling on each other's networks without charge.

Qwest, following the example of Ameritech, filed an uncontested tariff for SS7 usage charges with rates almost five times greater than Ameritech's, and applied those usage rates not only to its customer LECs, but also to Onvoy, even when Qwest dips Onvoy's database. Qwest does not provide detailed call records and Onvoy cannot verify what Qwest is charging. Instead of an administratively elegant solution of peering between Qwest and Onvoy, Qwest is charging Onvoy as if each of Onvoy's LEC customers were in fact a Qwest's customer. Because Onvoy has not invested in equipment that measures SS7 usage, Onvoy is currently not in a position to charge Qwest for its SS7 usage of the Onvoy network. Onvoy questions the appropriateness in requiring a competitor to invest heavily in measuring equipment that will do nothing to enhance the network.

Onvoy contends that it is inappropriate for RBOCs to establish one way charges on traffic that is clearly reciprocal and that the exchange of SS7 traffic between network providers is a classic example of the type of traffic where bill-and-keep arrangements are appropriate.

CONCLUSION

The Commission should act in accordance with the recommendations made herein.

Respectfully submitted,

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CONCLUSION

The Commission should act in accordance with the recommendations made herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2001, the foregoing "COMMENTS OF ONVOY, INC." was served by hand deliver, on the following:

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